



March 26, 2019

Office of Pesticide Programs  
Docket number EPA-HQ-OPP-2018-0805  
Environmental Protection Agency Docket Center (EPA/DC)  
(28221T)  
1200 Pennsylvania Ave. NW.  
Washington, DC 20460-0001

**Re: Comments on Petition Seeking Revised Testing Requirements of Pesticides Prior to Registration–Notice of Availability (Docket #: EPA-HQ-OPP-2018-0805)**

Please accept the following comments on behalf of the Center for Biological Diversity (“Center”) in response to the Environmental Protection Agency’s (“EPA”) receipt of a Petition Seeking Revised Testing Requirements of Pesticides Prior to Registration (“Petition”).

The Center for Biological Diversity (“Center”) is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.4 million members and online activists dedicated to the protection and restoration of endangered species and wild places. The Center has worked for twenty-six years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life. The Center’s Environmental Health Program aims to secure programmatic changes in the pesticide registration process and to stop toxic pesticides from contaminating fish and wildlife habitats. We appreciate the opportunity to provide comment.

The Center fully supports the citizen petition from the Center for Food Safety (“CFS”) seeking revised testing requirements of pesticides prior to registration and we urge the EPA to implement all of the actions requested by the petitioners.

The EPA does not currently regulate seeds that are coated with chemical pesticides because the agency considers pesticide-coated seeds “treated articles” that are subject to the Treated Article Exemption of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”).<sup>1</sup> This is an

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<sup>1</sup> 40 C.F.R. §152.25(a).

incorrect interpretation of the Treated Article Exemption, and EPA's current practice of exempting pesticide-coated seeds violates FIFRA.

Under FIFRA, treated articles or substances are exempt from regulation. A treated article is defined as: "An article or substance treated with, or containing, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation), if the pesticide is registered for such use."<sup>2</sup>

However – except in rare cases – a seed's pesticide coating is not meant to protect the seed but, rather, the developing plant. Therefore, the treated article exemption does not apply to pesticide-coated seeds because the pesticide is meant to protect the developing or full grown plant, not the article or substance itself (seed). The developing or full grown plant can be hundreds to thousands of times larger than the seed and is fundamentally different from a biological standpoint. Furthermore, in some cases, the pesticide label contains language that the seed coating may actually harm the seed by reducing germination or seedling vigor.<sup>3</sup> In addition, "80% to 90% of the coating chemicals move off the seed and plant into the surrounding air, soil, marginal vegetation and waters, illustrat[ing] that the bulk of the treatment does not remain in or on the 'treated article.'"<sup>4</sup>

Because the pesticide coating is not designed to protect the seed itself, and the vast majority of the pesticide is sloughed off the seed prior to, during or after planting, a pesticide coated seed cannot be considered a treated article. It's simply a pesticide delivery vehicle, more akin to the solid matrix that forms the substrate for pesticide granules than treated wood or paint. Therefore, the seed, in this case, is more accurately categorized as an "inert" ingredient in a pesticide formulation than a treated article.

In addition to the improper designation of seeds as "treated articles," the coating of seeds in neonicotinoid and other systemic insecticides has resulted in severe consequences to the environment. Nearly 1/15<sup>th</sup> of the entire land area of the lower 48 states is planted with neonicotinoid-treated seeds, at least 140 million acres annually.<sup>5</sup> Due to EPA's misuse of the treated article exemption for coated seeds, the agency has never done a full risk assessment on the harms caused by this use.

Peer-reviewed studies in the scientific literature have demonstrated the harms that come from overuse of neonicotinoid pesticides, including a seminal review by the International Union for

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<sup>2</sup> *Id.*

<sup>3</sup> Petition at 13.

<sup>4</sup> *Id.* at 37.

<sup>5</sup> *Id.* at 12.

the Conservation of Nature (IUCN) that looked at over 800 published studies.<sup>6</sup> In addition, the European Union has prohibited most neonic-treated seeds since 2013.<sup>7</sup> The harms that these chemicals inflict on the environment are well-characterized and outlined in the Petition.

In short, the EPA is improperly using the treated article exemption as a way to abdicate itself of its duties under FIFRA. This has real world consequences to pollinators, beekeepers, endangered species and the broader environment.

To conclude, the Center fully supports the citizen petition from CFS seeking revised testing requirements of pesticides prior to registration and we urge the EPA to implement all of the actions requested by the petitioners.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nathan Donley". The signature is fluid and cursive, with a long, sweeping tail on the last letter.

Nathan Donley, Ph.D.  
Senior Scientist  
Environmental Health Program  
Center for Biological Diversity

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<sup>6</sup> Van der Sluijs J.P., *et al.*, 2014. *Conclusions of the Worldwide Integrated Assessment on the risks of neonicotinoids and fipronil to biodiversity and ecosystem functioning*, Environ. Sci. Pollut. Res. 22 (1), 148-154, at [perma.cc/7RVA-FMA7](https://perma.cc/7RVA-FMA7).

<sup>7</sup> Petition at 14-15.